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2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

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5 BRIDGESTONE BRANDS, LLC,
6

7 Plaintiff,

8 vs.

9 QINGDAO ODYKING TIRE CO., LTD, DOES I
10 through X; and ROE CORPORATIONS I through
11 X, inclusive,

Defendants.

No. 2:13-cv-02164-GMN-VCF

ORDER

12 This matter involves Plaintiff Bridgestone Brands, LLC (“Bridgestone’s”), civil action for
13 trademark counterfeiting, trademark infringement, trademark dilution, false advertising, and unfair
14 competition arising under federal law. Before the court is Bridgestone’s *ex parte* Statement Regarding
15 Status of Service of Process on the Defendant.

16 **DISCUSSION**

17 Prior to discussing Bridgestone’s Statement Regarding Status of Service of Process the court will
18 briefly discuss the local rule governing *ex parte* motions.

19 ***A. Ex Parte Motions Under Local Rule 7-5(a)***

20 As defined by Local Rule 7-5(a), an *ex parte* motion is a motion “filed with the Court, [that] is
21 not served upon the opposing or other parties.” *See* LR 7-5(a). The purpose of an *ex parte* motion is,
22 therefore, to allow a party to communicate with the court privately. For this reason, *ex parte* motions
23 must “contain a statement showing good cause why the matter was submitted to the Court without notice
24 to all parties.” LR 7-5(b). An *ex parte* motion should be made when a movant does not want a party or
25 their opposing counsel to be served, not because the movant cannot serve the party within the time

1 granted by the court. By filing the motion on an *ex parte* basis, Defendants will never be served with this
 2 document. *See* Black's Law Dictionary (9th ed. 2009), *ex parte* motion ("[A] motion that a court
 3 considers and rules on without hearing from all sides").

4 The Plaintiff's *ex parte* filing in this matter was inappropriate. Whether service of process is
 5 appropriately executed is a matter that affects a Defendant's due process rights under the Constitution.
 6 *See Crowley v. Bannister*, 734 F.3d 967, 975 (9th Cir. 2013) (citing *Jackson v. Hayakawa*, 682 F.2d
 7 1344, 1347 (9th Cir. 1982)) (stating that personal jurisdiction over a Defendant is conferred by
 8 compliance with Rule 4). A Defendant must be afforded an opportunity to challenge service if they
 9 believe that service was not executed in accordance with the Constitution's "traditional notions of fair
 10 play and substantial justice." *See Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The court
 11 finds no sufficient basis for the Plaintiff's filing to be submitted without notice to the parties.

12 ***B. The Court Takes Notice of Plaintiff's Statement Regarding Service Deadline***

13 Pursuant to Federal Rule of Civil Procedure 4(m), a Plaintiff has 120 days after a complaint is
 14 filed to serve a Defendant. Fed. R. Civ. P. 4. However, subdivision m of Rule 4 expressly states that the
 15 120 day provision does not apply to service of a Defendant in a foreign country under Rule 4(f) or
 16 4(j)(1). Fed. R. Civ. P. 4. The Plaintiff alleges that the Defendant is a Chinese corporation, and thus
 17 Rule 4(m) may not apply. The Plaintiff's Statement Regarding Status of Service of Process on the
 18 Defendant will be part of the public record of this case.

19 ACCORDINGLY, and for good cause shown,

20 IT IS ORDERED that the Clerk remove the *ex parte* designation from Bridgestone's Statement
 21 Regarding Status of Service of Process on the Defendant (#12).

22 IT IS SO ORDERED.

23 DATED this 28th day of March, 2014.



24 CAM FERENBACH
 25 UNITED STATES MAGISTRATE JUDGE